

California Environmental Protection Agency
CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD
1001 I Street, P.O. Box 4025 Sacramento, CA 95812

Rosario Marin, Chair
Rosalie Mulé, Member
Cheryl Peace, Member
Gary Petersen, Member
Carl Washington, Member

Special Board Meeting

Monday, October 3, 2005 1:00 pm

**Joe Serna Jr., CalEPA Building
Sierra Hearing Room
1001 I Street, Sacramento, CA 95814**

AGENDA:

I. CALL TO ORDER

II. ROLL CALL AND DECLARATION OF QUORUM

- Pledge Of Allegiance

III. OPENING REMARKS

IV. REPORTS AND PRESENTATIONS

V. PUBLIC COMMENT

VI. NEW BUSINESS AGENDA ITEMS

1. Consideration Of Board Action Over The Madera County Local Enforcement Agency For Failure To Comply With Designation And Certification Requirements (Title 14 CCR Sections 18085-18087)

NOTES:

- Agenda items may be taken out of order.
- The official California Integrated Waste Management Board agendas are available via the Internet at: www.ciwmb.ca.gov/agendas/

- *This agenda notice does not include a specific ending time for the Board meeting. The meeting shall end when all of the noticed items and other business have been dealt with. For meetings noticed for two days, the meeting may end on the first day noticed if all business is concluded on that day*
- *Persons interested in addressing the Board on any agenda item must fill out a speaker request form and present it to the Board Secretary prior to Board consideration of the item. The Board may limit the time for individual public testimony.*
- *If written comments are submitted, 15 two-sided copies must be provided in advance of the Board meeting with the following information on the first page of the document: date, addressee, Board meeting, agenda item number, and name of person submitting the document.*
- *Any information mailed with this agenda is disseminated as a public service only, and is intended to reduce the volume and costs of separate mailings. This information does not necessarily reflect the opinions, views, or policies of the Board.*
- *To request special accommodations for those persons with disabilities, or to verify if an item will be heard, or to obtain copies of the agenda items, please contact the Board's Administrative Assistant at (916) 341-6550 or brdmeet@ciwmb.ca.gov.*

Notice: The Board may hold a closed session to discuss the following: confidential tax returns, trade secrets, or other confidential or proprietary information of which public disclosure is prohibited by law; the appointment or employment of a public employee; or litigation under authority of Government Code Sections 11126 (a)(1), (c)(3), (15), and (e), respectively.

Important Notice: Items may be placed on the consent agenda. The Board will approve these items all at once without discussion. Therefore, if a Board Member or a member of the public wishes to speak to an item on the consent calendar, they must make their request that the item be removed from the consent agenda before the Board considers it.

California Integrated Waste Management Board

Special Board Meeting

October 3, 2005

AGENDA ITEM 1 (Revised)

ITEM

Consideration Of Board Action Over The Madera County Local Enforcement Agency For Failure To Comply With Designation And Certification Requirements (Title 14 CCR Sections 18085-18087)

I. ISSUE/PROBLEM STATEMENT

The Madera County Environmental Health Department, as the Board-approved and certified Local Enforcement Agency (LEA) for the jurisdiction of Madera County, must maintain designation and certification requirements set forth in the Public Resources Code (PRC) and California Code of Regulations, Title 14 (14 CCR). However, current conditions reveal that the Madera County LEA is not fulfilling two certification requirements: 1) separation between the operating unit(s) and the LEA [required by PRC 43207 and 14CCR 18051(d)]; and 2) maintaining adequate staffing [required by PRC 43200 (a)(1) and 14CCR 18072]. Madera County recently modified its organizational structure to place a number of departments within a Resource Management Agency. This has resulted in the Department of Engineering and Health Services, which operates solid waste facilities, and the Department of Environmental Health, which contains the Board-certified Local Enforcement Agency, being within the same County Agency, which is in violation of Board requirements. In addition, while conducting the LEA evaluation in 2004, staff discovered that full-time LEA staff had left. To date, the LEA lacks the required minimum of one “full time” Registered Environmental Health Specialist dedicated to solid waste. Staff has attempted to resolve these issues informally over the last two years without success and therefore brings this item forward to allow the Board to determine what action, if any, to take against the LEA.

II. ITEM HISTORY

This is the first time that this item has come before the Board. However, in a relevant item on October 29, 1992, the California Integrated Waste Management Board (CIWMB) passed Resolution 92-112 which approved the designation of, and issued certification to the Madera County Environmental Health Department as LEA for the jurisdiction of Madera County.

III. OPTIONS FOR THE BOARD

- 1) The Board may withdraw designation approval and de-certify the Madera County Health Department as LEA.
- 2) The Board may establish a schedule and probationary period for coming into compliance with LEA certification requirements.
- 3) The Board may retain designation approval and certification of the Madera County Health Department as LEA; however, this option is in direct conflict of current regulations.
- 4) Direct staff to take other actions as specified.

IV. STAFF RECOMMENDATION

Staff recommends Option 1, to withdraw designation approval and de-certify the Madera County Health Department as LEA for Madera County. If no other designation is made, the CIWMB would assume duties as enforcement agency.

However, if the County is willing to comply with requirements to modify its organizational structure and provide required LEA staff, then staff recommends that the Board choose Option 2, and establish a specific schedule for the organizational and staffing changes to be approved and implemented.

V. ANALYSIS

A. Key Issues and Findings

Background

The California Integrated Waste Management Act of 1989 (Public Resources Code 43202) allows local governing bodies to designate an enforcement agency to carry out solid waste permitting, inspection, and enforcement duties within their jurisdiction. Local Enforcement Agencies (LEA) begin as local agencies designated by their local governing body (Board of Supervisors, City Council, Joint Powers Agreement, etc.) to be approved and certified by the California Integrated Waste Management Board (Board).

Once a local agency is designated, Board staff verifies that the agency designation is shielded from potential conflict of interest with local waste management entities (the operating unit) in the manner required by statute and regulations. The designated agency must also have experience in the enforcement of public health and environmental regulations.

Board staff assesses the “designated agency” to verify that it meets the requirements of Title 14 CCR section 18051. A designated agency meeting these requirements is further evaluated for compliance with certification requirements (Title 14 CCR section 18070 et. seq.). This certification assessment includes determination of staff adequacy, technical expertise, budget resources, training, and review and approval of an agency Enforcement Program Plan (EPP). The LEA is then formally certified by the Board. Currently, 55 Board-certified LEAs perform their permitting, inspection, and enforcement duties throughout the state.

Solid Waste Enforcement

Statute (PRC 43204) prohibits any enforcement agency from exercising the powers and duties of an enforcement agency until the designation is approved by the Board. Additionally, statute (PRC 43202) provides that if an enforcement agency is not designated and certified, the Board, in addition to its other powers and duties, shall be the enforcement agency within the jurisdiction. Statute (PRC 43216) specifies that if the Board withdraws its approval of the designation of an enforcement agency, and if no other local designation is made within 90 days, the Board shall become the enforcement agency for the jurisdiction of the former enforcement agency. During this 90 day period, the Board will become the enforcement agency unless another option is available for its consideration. For example, the county may designate another local agency or propose a willing neighbor LEA to perform solid waste enforcement within its jurisdiction; both actions are subject to Board approval and or certification. Absent that, the Board,

pursuant to 14 CCR 18087, *may* enter into agreements or contracts at its discretion with any certified local enforcement agency for the purpose of delegating its enforcement agency duties within any jurisdiction until a local agency is designated, approved and certified by the Board. If the Board does not enter into any such agreements or contracts, or is unsuccessful in trying to do so, then it must, per statute, assume the enforcement agency duties itself.

If the Board is the enforcement agency, statute (PRC 43212.1) provides that the local governing body and the Board shall enter into an agreement which shall identify the jurisdictional boundaries of the enforcement agency, address the powers and duties to be performed by the Board as the enforcement agency, and identify an estimated workload and anticipated costs to the Board. Furthermore, if the Board is the enforcement agency, statute (PRC 43212) allows the Board to impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency. Statute directs that those fees be determined in a manner whereby the Board and the local governing body consult. Any fees imposed pursuant to this section shall bear a direct relationship to the reasonable and necessary costs, as determined by the Board, of providing for the efficient operation of the activities or programs for which the fee is imposed. If the Board is the enforcement agency for a county and all of the cities within that county, the local governing body shall be the county Board of Supervisors.

History of Certification Regulations with Emphasis on Conflict of Interest and Technical Expertise Requirements

When the LEA certification regulations were first adopted in 1991, jurisdictions throughout the entire state underwent a lengthy certification/re-certification process to comply with statute. PRC 43204 states “after August 1, 1992, the board shall not approve a designation unless it finds that the designated enforcement agency is capable of fulfilling its responsibilities under the enforcement program and meets the certification requirements adopted by the board pursuant to Section 43200”.

As a result of this re-certification/certification process, many local agencies/ jurisdictions had to reform, give up the LEA program, or select one qualified agency to designate as the LEA.

1. Conflict of Interest

Before 1992, many jurisdictions contained more than one LEA because solid waste standards were divided into health, non-health, and permitting categories. Operating standards were usually the responsibility of county engineering or public works departments. Health standards were usually the responsibility of the local health department. Permitting standards were the responsibility of the planning department. Jurisdictional solid waste compliance varied widely.

This resulted in much confusion at the time. First, the inspector had to determine if a violation was within his/her purview. Then, the inspector had to determine if referral was warranted and to who, and how to follow up, or not. Similarly, citizens went through a similar confusing analysis to determine who to complain to about an observed problem. Operators also suffered due to a lack of clarity when some standards overlapped

categories. The revised certification statutes and regulations solved these problems by uniting the health, permitting and operating categories and mandating a sole LEA per jurisdiction responsible for all aspects of solid waste enforcement.

These new certification regulations also implemented the statutory provisions that intended to prevent potential conflicts of interest from occurring. As mentioned, prior to the certification regulations, agencies which operate or cause to operate the solid waste system within a jurisdiction were indeed able and required to enforce operational standards. Conflict of interest was a significant enough problem that it caused the state legislature to enact PRC section 43207 as follows:

“No local governmental department or agency, or any employee thereof, which is the operating unit for a solid waste handling or disposal operation shall be the enforcement agency, or an employee thereof, for the types of solid waste handling or disposal operation it conducts unless authorized by the board to act in that capacity.” (emphasis added)

The Board adopted two specific regulations in 1991 to further implement this statutory requirement:

- Title 14 CCR, section 18011(a)(16) and (17), which defines an LEA as: **“Local Enforcement Agency” (LEA) means an enforcement agency with board certification(s) totally separate from the operating unit(s) of the local governing body. ... “Operating Unit” means a local agency within the jurisdiction of the designating local governing body that operates, causes to operate, or administers contracts or agreements for any portion of a facility or solid waste handling and disposal system.**” (emphasis added)
- Title 14 CCR, section 18051(d) requires that the LEA designation information package include: **“An organizational chart documenting the separation** of the designated agency from public agencies or departments that are the operating units under the local governing body;” (emphasis added)

The Board did not arbitrarily decide and impose certification regulations. The rulemaking package required an extensive development process which evaluated all known LEA problems at the time. Many groups, including professional associations and industry (for relevant issues) participated in discussions and workgroups designed to find acceptable if not ideal certification regulations. In addition to conflict of interest, many other tough issues emerged to tackle including: LEA jurisdiction, LEA duties and responsibilities, Board responsibilities, LEA performance, the adequacy of LEA budgets, adequacy of staff, staff technical expertise, staff training, enforcement plans, etc.

As required by statute, conflict of interest issues were addressed during the process. At the time, the Board and participants in the process reached an important compromise by agreeing that the Board certification regulations would not solve the conflict of interest issue by specifying which agency, department, or local office could or could not be the local designation. Instead, the compromise was to merely require that the LEA and local operating unit be in separate agencies, not to specify one or the other.

The reasoning behind this solution was that at the very least, if the operator of a solid waste facility and the regulator of that facility are answerable to the same department or

agency head, there would be a greater potential of a conflict of interest in how that facility would be regulated. The Board's regulations therefore require counties to set up their organizational structure to prevent this to the extent possible. As such, regulations require LEAs to be out of the "chain-of-command" of a local department or agency head that also has the operator under its jurisdiction. However, in order to balance the need to avoid potential conflicts of interest with the realities of local government structure, the Board allows the LEA and operator to both be under the purview of the County Administrator (CAO) (i.e., someone who is not the head of an agency or department, but of the entire county structure).

This solution has served the Board and LEAs for many years. For example, Stanislaus County decided not to separate the operating unit from its proposed designation and therefore the Board is the jurisdiction's enforcement agency. The City of San Jose designated and the Board approved and certified the Department of Planning, Building and Code Enforcement as the LEA to provide separation from the operating unit. Napa County has the LEA housed within the County Administrative Office to provide separation from the operating unit. El Dorado County designated and the Board approved and certified the El Dorado County Health Department Public Health Laboratory as LEA to provide separation from the operating unit. All LEAs, to our knowledge, maintain this separation. Many jurisdictions have approached Board staff with proposals to reorganize and once made aware of the conflict of interest potential, do not carry out such proposals. The County of San Luis Obispo is such an example, with the Board becoming EA in July 2004.

2. Technical Expertise

LEA staff adequacy and technical expertise were also addressed during the certification regulation development. LEAs must function as the central agency responsible for ensuring that all aspects of extensive permitting, inspection, and enforcement duties are carried out and thus must maintain highly trained staff. Historically, Board experience demonstrated that full time LEA staff members dedicated solely to solid waste were consistently better technically, developed expertise reasonably quickly, and dedicated adequate time to be properly trained to investigate and correct public health, safety, and environmental concerns related to solid waste. Board experience also showed that a combination of non-dedicated full-time employees with multiple responsibilities often failed to meet the needs of the LEA program.

The certification regulations adopted in 1991 required at least one full time staff in each LEA program, to assure adequate time dedication to program implementation, and to solid waste technical and regulatory knowledge, which continues to grow in scope and complexity. The requirement also provided continuity and consistency in the LEA programs. The Board viewed genuine local commitment to a successful LEA program as including at least one staff person, full time. The cost of such a requirement was addressed in statute (PRC 43213) by authorizing the enforcement agency, upon a majority vote of its local governing body, to prescribe, revise, and collect fees or other charges to cover the actual cost of the solid waste enforcement authorized under this title. Therefore, after considering benefits and cost recovery, requiring at least one staff in order to be considered an LEA was deemed reasonable.

Subsequently, jurisdictions with low populations and low numbers of facilities convinced the Board that their situation required different treatment. The regulations were then amended in 1994 as follows: In addition to allowing jurisdictions to combine resources, form joint powers agreements (JPA)s and create an LEA to serve them, jurisdictions with a population of under 50,000 persons were also allowed to use a workload analysis to determine LEA staffing, subject to Board approval. This meant that for some programs, less than one full-time staff was acceptable. As a result, current staffing regulations balance the complexity of LEA functions, jurisdictional population, and workload. The regulations were amended again in 2003, following an analysis of the population growth effects on existing LEAs, to change this population figure to 80,000 persons.

In summary, jurisdictions with a population greater than 80,000 persons must comply with the following certification regulation:

18072. Technical Expertise.

(a) Performance of permitting, inspection, and enforcement duties and responsibilities of comprehensive solid waste enforcement issues shall reside solely within an LEA.

The LEA shall have one or more full time staff members dedicated solely for solid waste issues. For all certification types the dedicated staff shall be composed of at least one registered environmental health specialist (REHS), pursuant to Sections 514 through 534 of the Health and Safety Code. Additional staff for permitting, inspection, and enforcement duties may be a REHS(s), or person(s) meeting the requirements of Sections 106635 of the Health and Safety Code, as certified by the LEA program director or manager.

Madera County LEA Issues and Communications with Board Staff

On March 24, 1992, the Madera County Board of Supervisors designated the Madera County Environmental Health Department as enforcement agency for the jurisdiction of Madera County. On October 29, 1992, the Board approved the designated agency and issued it certification.

As mentioned in the "Issue/Problem Statement" on page one of this agenda item, current conditions in Madera County reveal two issues regarding the LEA's certification: 1) a reorganization caused a potential conflict of interest and 2) inadequate staffing. Following is a full staff analysis and chronology of these two issues.

1. Conflict of Interest

In 2003, the County of Madera determined that it wanted to reorganize and place a number of departments under the umbrella of a new agency – the Resource Management Agency (RMA). This proposed structure would have placed both the Department of Engineering and General Services, which operates the solid waste facilities, and the Department of Environmental Health, which functions as the LEA, within the same agency and under the supervision of the Director of the RMA. Therefore, in order to address the Board's requirements, the County proposed placing the LEA functions of the Department of Environmental Health under the CAO. (See Attachment 1, Exhibit B and Attachment 2.)

Board staff conducted two phone conferences with the County and expressed concerns about the proposal. First, while the organizational chart showed the LEA functions of the

Department of Environmental Health under the CAO, the LEA would be physically located with the rest of the Department of Environmental Health, not in the same building with the CAO. In addition, the proposal called for the LEA to still be supervised by the Director of the Department of Environmental Health. Therefore, staff was still concerned about how this proposal would prevent potential conflicts of interest.

In those phone conferences, the County expressed 1) its need to be efficient with the use of limited resources; 2) its need for a qualified Registered Environmental Health Specialist (the Department of Environmental Health Director) to supervise the LEA, as opposed to the CAO, who would not be technically qualified; and 3) its assertion that the RMA Director was essentially the equivalent to the CAO in these circumstances, since s/he would be directly answerable to the Board of Supervisors, not the CAO. As described below, subsequent information conflicted with these assertions, in Board staff's opinion.

Board staff then sent a formal notice to the County about this potential violation on April 20, 2004 (Attachment 3). In a response dated April 26, 2004~~5~~(Attachment 4), the County Counsel reiterated its position but also included a proposed ordinance that would explicitly provide that:

"The Resource Management Agency ...[includes]... environmental health, except insofar as that department functions as the Local Enforcement Agency. LEA functions will not be within the Resource Management Agency but will remain subject to oversight and supervision by the County Administrative Officer."

In a response letter to County Counsel dated June 8, 2004 (Attachment 5), Board staff noted that this proposal was "potentially satisfactory" but requested additional information on the following points: 1) how the County envisioned the way in which the CAO, and not the RMA, would be supervising the LEA, given that the LEA would be housed with the RMA, not the CAO; 2) how the County was meeting the requirements for an LEA to have at least one full-time REHS, since its explanation about its resource limits indicated that it was staffing the LEA with one person working part-time on LEA issues with the Director of Environmental Health in order to equal one full-time person; and 3) how the ordinance would be implemented given that part of the "full-time equivalent" REHS was to be from the Director of Environmental Health whose other duties would be supervised by the RMA Director (who would also be the supervisor of the landfill operating unit).

After receiving no response to this letter from County Counsel, Board staff wrote a follow-up letter to the Chair of the Board of Supervisors on July 30, 2004 (Attachment 6).

On August 18, 2004, the Chair of the Board of Supervisors responded explaining why the County did not feel it could solve this issue any other way and reiterating its previous positions (Attachment 7).

On October 6, 2004, the County forwarded a new amendment to its RMA ordinance which it believed would resolve the issues that had been discussed. The amendment would remove the RMA director's power to hire and fire department heads, and instead only allow him or her to make recommendations to the Board of Supervisors (Attachment 8).

As noted above, the previous draft ordinance explicitly removed the LEA function from the Environmental Health Department (Attachment 4). When Board staff inquired about the status of that proposal, the County indicated in a January 7, 2005 letter (Attachment 9) that the change (LEA program moved under CAO) was not being made, but indicated that it had instead adopted the ordinance amendment that it had forwarded on October 6, 2004.

Current Organizational Structure

As of June 30, 2005, the current Madera County organizational structure has the operating unit for the landfill (the Department of Engineering and General Services) and the LEA (the Department of Environmental Health) within the Resource Management Agency. Additionally, to our knowledge, the LEA consists of one REHS acting as part-time staff and a REHS acting as part-time supervisor (Director of Environmental Health). Consequently, the LEA is not supervised by the CAO as proposed during staff discussions.

2. Staff Resources Inadequacy

As mentioned above, in its April 26, 2004 letter to the Board (Attachment 4), Madera County disclosed that it lacked sufficient resources to fund one full-time REHS as required by CCR, Title 14 section 18072. In its August 18, 2004 letter (Attachment 7), Madera County Board of Supervisors reaffirmed that it does not intend to fund a separate REHS position for the LEA program.

Summary of Violations of Statute and Regulations

As noted above, the current Madera County organizational structure, with respect to the LEA and county operating unit, violates PRC 43207 and its implementing regulations. Furthermore, its current staffing violates LEA certification regulations.

Regulatory Options for the Board

The Board's regulations (14 CCR 18086) provide specific types of Board action over LEAs:

"If the Board finds that an LEA is not fulfilling one or more of its responsibilities and/or obligations under Public Resources Code Division 30, Part 4, Chapter 2 (the "Solid Waste Facilities Chapter of the Waste Management Act") and/or these implementing regulations, then the Board, in accordance with Public Resources Code Sections 43215 and 43216.5, may take one or more of the following actions:

- (a) Assume responsibility for specified LEA duties by partially or fully decertifying an LEA, either permanently or through a temporary suspension. Such an assumption of responsibility shall only extend to the LEA duties so specified by the board. The board may charge for operations pursuant to PRC 43212(a) while performing enforcement agency duties.
- (b) Conduct more frequent inspections and evaluations within an LEA's jurisdiction.
- (c) Establish a schedule and probationary period for improved performance by an LEA, and/or call for the submission of an evaluation workplan.

(d) Withdrawal of the Board's approval of the local governing body's designation of the LEA.

(e) Implement any other measures which may be determined by the Board to be necessary to improve LEA compliance.”

B. Environmental Issues

Based on available information, staff is not aware of any environmental issues related to this item. There are no specific environmental issues raised by this item, however, preventing potential conflicts of interest for the LEA is important in ensuring appropriate regulation of facilities for the protection of the public health, safety, welfare and the environment.

C. Program/Long Term Impacts

The CIWMB Enforcement Agency Section could incur the permitting, inspection and enforcement duties for Madera County.

Note, at the June 2004 CIWMB Board meeting, staff presented an agenda item on a memorandum of agreement with San Luis Obispo County in which the Board would assume enforcement agency duties for San Luis Obispo County. As part of the discussion, staff indicated that workload issues would need to be taken into account in performing the duties for the jurisdiction. The item also indicated that the reassignment of existing Board staff was “a stop-gap approach; where positions would come from and how they would be funded should the Board become the enforcement agency in other jurisdictions is unknown”.

D. Stakeholder Impacts

Staff is not aware of any specific stakeholder impacts at this time, other than the potential decertification of the LEA.

E. Fiscal Impacts

Pursuant to Public Resources Code 43212, if the Board decertifies the Madera County LEA and assumes enforcement agency responsibilities for Madera County, the Board may impose fees to recover its costs of operation on the local governing body, a solid waste facility operator, or a solid waste enterprise that operates within the jurisdiction of the enforcement agency, and shall collect those fees in a manner determined by the Board and developed in consultation with the local governing body. Additionally, PRC sections 43212.1 and 43310.1 further expand on the Board’s ability to recover its costs. Should the Board act as enforcement agency in the County of Madera, there will be a new up front fiscal impact to the Integrated Waste Management Account (IWMA) to cover salaries, wages and benefits, as well as travel costs for FY 2005/2006 and each fiscal year following. Staff will also need to return to the Board with more detailed information regarding any arrangements and agreements in order to fulfill this potential duty.

F. Legal Issues

None in addition to those discussed above.

G. Environmental Justice

Staff is not aware of any Environmental Justice issues related to this item at this point in time.

H. 2001 Strategic Plan

Staff work on ensuring LEAs are maintaining certification requirements is completed as part of Goal 4: Managing and mitigating the impacts of solid waste on public health and safety and the environment and promoting integrated and consistent permitting, inspection, and enforcement efforts.

Goal 4, Objective 1—Through consistent and effective enforcement or other appropriate measures, ensure compliance with federal and State waste management laws and regulations.

VI. FUNDING INFORMATION

This item does not require any Board fiscal action.

VII. ATTACHMENTS

1. September 12, 2003 letter from Doug Nelson
2. December 10, 2003 e-mail from Doug Nelson
3. April 20, 2004 letter to Ronn Dominici
4. April 26, 2004 letter from Doug Nelson
5. June 8, 2004 letter to David Prentice
6. July 30, 2004 letter to Ronn Dominici
7. August 18, 2004 letter from Ronn Dominici
8. October 6, 2004 letter from Doug Nelson
9. January 7, 2005 letter from Doug Nelson
10. Resolution Number 2005-277

VIII. STAFF RESPONSIBLE FOR ITEM PREPARATION

A. Program Staff: Gabe Aboushanab

Phone: 341-6379

B. Legal Staff: Elliot Block

Phone: 341-6080

C. Administration Staff: N/A

Phone: N/A

IX. WRITTEN SUPPORT AND/OR OPPOSITION

A. Support

None at the time the item was written

B. Opposition

Madera County

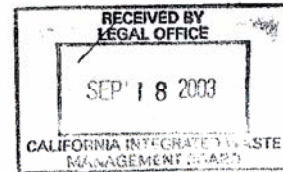


Office of the County Counsel

David A. Prentice, County Counsel
Douglas W. Nelson, Asst. County Counsel

William G. Smith, Deputy
James M. Gerecke, Deputy
Judy A. Wise, Deputy
David L. Herman, Deputy

September 12, 2003



Elliot Block
California Integrated waste management Board
Post Office Box 4025
Sacramento, CA 95812-4025

Re: Madera County LEA

Dear Mr. Block:

Current Problem:

The Madera County Department of Environmental Health is the LEA for Madera County. Your agency has indicated that the Environmental Health Department cannot continue to function in that capacity so long as it remains a department in the Resource Management Agency of Madera County. A copy of the existing organizational chart is attached as exhibit "A".

Madera County's Proposed Solution:

We have moved the administrative oversight of the LEA from the Resource Management Agency to the County Administrative Office. The staff person who is directly responsible for the LEA functions will be answerable only to the Environmental Health Director, who in turn will be answerable only to the County Administrator. Even though the LEA will be located in the new Resource Management Agency building, the organization and budget will be completely separate. A copy of the proposed organizational chart is attached as exhibit "B".

If this is acceptable, we will present an ordinance to the Board of Supervisors to implement the revised organizational structure.

Elliot Block
Re: Madera County LEA
September 12, 2003
Page 2

Please let me know your thoughts on this at your earliest convenience.

Very truly yours,

DAVID A. PRENTICE
County Counsel

By: 
DOUGLAS W. NELSON, Assistant

DWN:ab

Cc: Jill Nishi, Director, Environmental Health —
Leonard Garoupa, RMA Director —
Stell Manfredi, County Administrative Officer —
Carol Barney, Director, Public Health
David A. Prentice, County Counsel

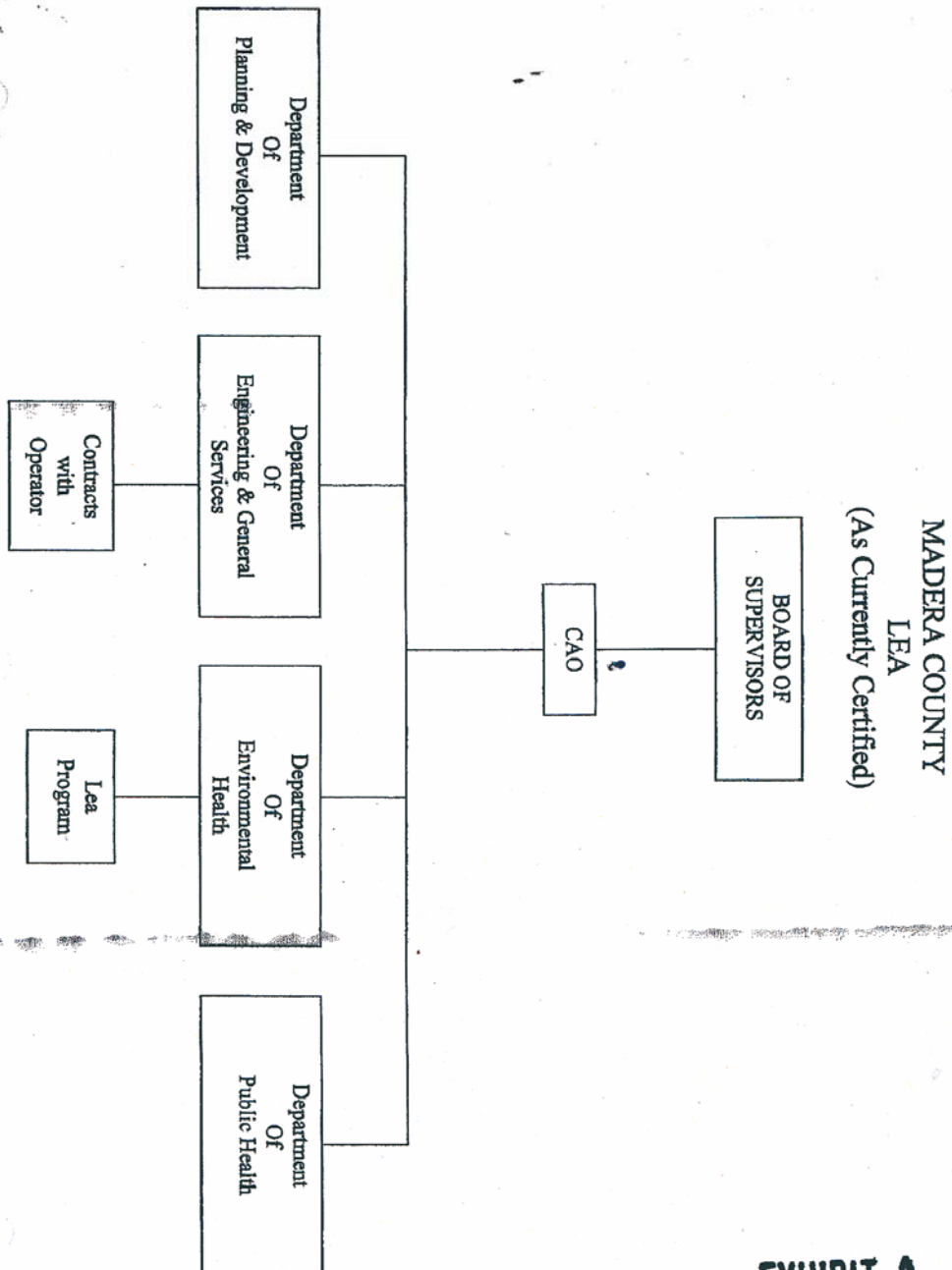


EXHIBIT A

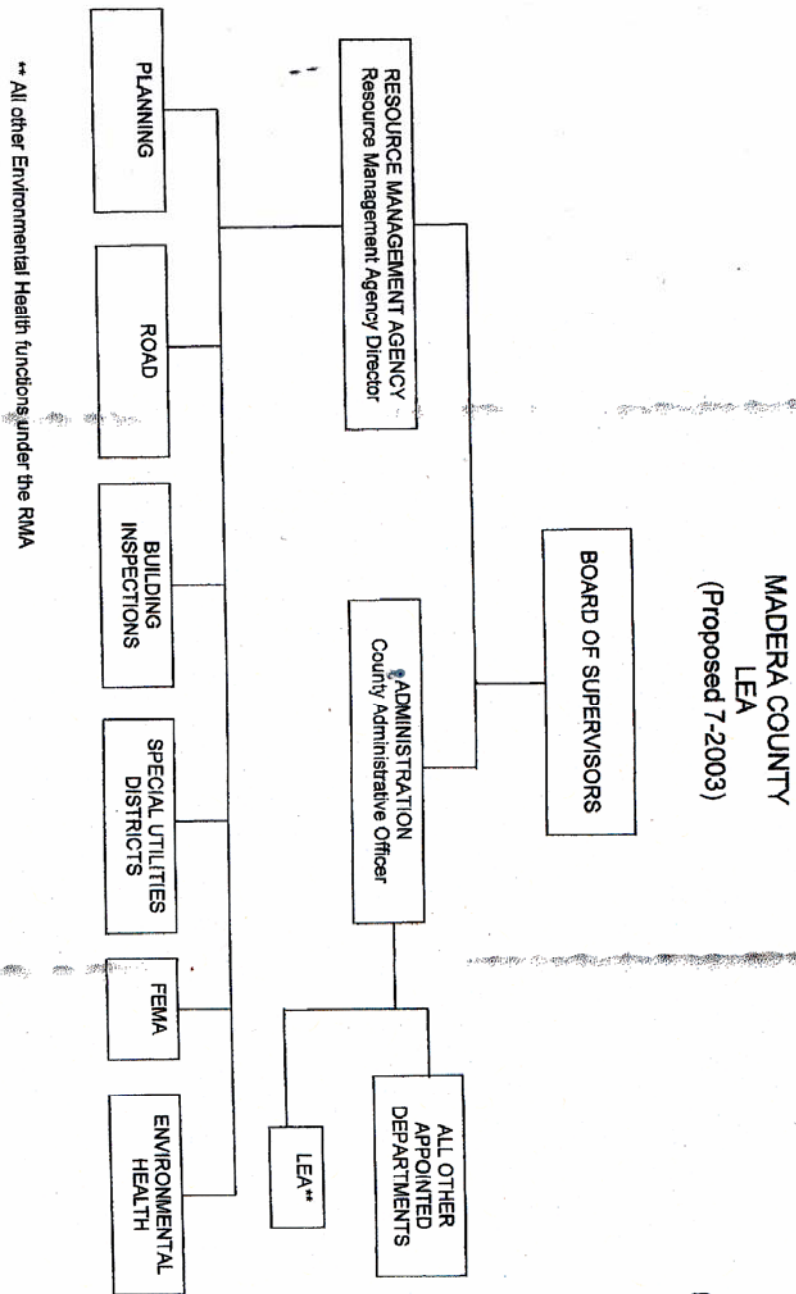


EXHIBIT B

Block, Elliot

From: Doug Nelson [dnelson@madera-county.com]
Sent: Wednesday, December 10, 2003 9:59 AM
To: eblock@ciwmb.ca.gov
Subject: Madera LEA
Attachments: rma dept ord adding 2.20.doc

This is the ordinance under which the LEA operates. The only difference from our former structure is that the constituent departments report to the RMA director rather than the CAO.

4/21/2005

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA
ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 2.20 TO TITLE TWO OF THE
MADERA COUNTY CODE CREATING THE RESOURCE MANAGEMENT
AGENCY

The Board of Supervisors of the County of Madera, State of California, ordains as follows:

SECTION 1:

Chapter 2.20 is added to Title Two of the Madera County Code, to read in its entirety as follows:

Chapter 2.20: RESOURCE MANAGEMENT AGENCY

Sections:

- 2.20.010 Resource Management Agency created.
- 2.20.020 Office of Director of Resource Management Agency Created.
- 2.20.030 Duties.
- 2.20.040 Delegated Authority.
- 2.20.050 Assistance by other county officer or employee.

2.20.010 Resource Management Agency Created: The Resource Management Agency of the County of Madera is created as a comprehensive local agency to administer, coordinate and oversee the development and implementation of policies and regulations concerning land use planning, engineering and general services, public works, special district services, roads and transportation, environmental health, and parks and recreation activities. The powers and duties of the constituent departments of the Resource Management Agency are as set forth in state law and the Madera County Code. The constituent departments of the Resource Management Agency are the Planning Department, Road Department, Department of Engineering and General Services,

Environmental Health Department and such other departments as the Board of Supervisors may designate.

2.20.020 Office of Resource Management Agency Director Created: The Office of Resource Management Agency Director is created. The Director shall be appointed by and serve at the pleasure of the Board of Supervisors. The Director shall direct and oversee the operations of the component departments of the Resource Management Agency subject to the direction of the Board of Supervisors and in compliance with state law and local rules.

2.20.030 Duties. The Director shall:

A. Act as agent of, and be responsible to, the Board of Supervisors in all matters pertaining to the efficient administration of such affairs of the constituent departments of the Resource Management Agency as may be designated by this chapter or the Board of Supervisors;

B. Enforce all ordinances, resolutions, orders, directives and regulations of the Board of Supervisors as may be directed by said Board;

C. Recommend an annual county budget for the constituent departments of the agency and exercise budgetary oversight for those departments;

D. Recommend a long-term plan of capital improvements accompanied by pertinent financial data and recommendations as to methods of financing;

E. Recommend improved and standardized processes and procedures for the constituent departments;

F. Recommend desirable consolidations or rearrangements of departments and functions to promote efficiency and economy therein;

G. Conduct continuous research in administrative policies and practices, and make recommendations to the Board of Supervisors as to the adoption of such policies and practices as will further the orderly, efficient and economic conduct of the business of the Resource Management Agency;

H. Subject to the authority and duties of the purchasing agent, make recommendations as to the purchasing of property, equipment and supplies;

I. Direct such central administrative services as may be placed under the direction of the Resource Management Agency Director by the Board of Supervisors;

2.20.040 Delegated Authority The Resource Management Agency Director shall provide administrative direction to and exercise, as necessary, the Board of Supervisors= authority to supervise the operations of the constituent departments; evaluate those departments and department heads at least annually; hire, terminate, suspend or take such other disciplinary or related administrative actions as needed concerning those department heads, and to exercise authority for scheduled salary adjustments as authorized by the Board of Supervisors.

2.20.050 Assistance by other County Officer or Employee. To assist in carrying out the powers and duties herein vested in the Resource Management Agency Director, the Director may call upon any county officer or employee to perform any act which such officer or employee is legally authorized to perform including the furnishing of any statistical data or other reports required.

SECTION 2.

This ordinance shall take effect and be in force thirty (30) days after its adoption.

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The foregoing Ordinance was adopted this _____ day of _____, 2002,
by the following vote:

Supervisor Bigelow voted: _____

Supervisor Moss voted: _____

Supervisor Dominici voted: _____

Supervisor Silva voted: _____

Supervisor Gilbert voted: _____

Chairman, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By _____



Terry Tamminen
Secretary for
Environmental
Protection

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

April 20, 2004

Mr. Ronn Dominici, Chair
Madera County Board of Supervisors
Madera County Government Center
209 W. Yosemite Avenue
Madera, CA 93637

Subject: Madera County Solid Waste Local Enforcement Agency (LEA) Certification

Dear Mr. Dominici:

As you may be aware, the Madera County Environmental Health Department was designated by the County Board of Supervisors on March 24, 1992, and approved and certified by the California Integrated Waste Management Board (CIWMB) as the LEA for Madera County. Prior to its certification, the Madera County Environmental Health Department had to meet requirements pursuant to Title 14 of the California Code of Regulations. One of the Title 14 requirements that a local agency must meet include the definition of an LEA:

18011. Definitions.

(a) Unless the context otherwise requires, the following definitions shall govern construction of this Chapter:

(16) "Local Enforcement Agency" (LEA) means an enforcement agency with board certification(s) **totally separate from the operating unit(s) of the local governing body.** An LEA is a comprehensive solid waste management enforcement agency which performs permitting inspection and enforcement duties for solid waste handling, and permitted, closed, abandoned, exempt, illegal, and inactive facilities. An LEA is solely responsible for carrying out solid waste enforcement in its jurisdiction as defined in 14 CCR Division 7, 27 CCR Division 2, Subdivision 1 (§20005 et seq.) and Division 30 of the Public Resources Code. Upon certification(s) the LEA shall have full power to execute the Act and the regulations adopted hereto.

(17) "Operating Unit" means a local agency within the jurisdiction of the designating local governing body that operates, causes to operate, or administers contracts or agreements for any portion of a facility or solid waste handling and disposal system.

Based on teleconferences with Madera County staff (including the Chief Administrative Officer, Assistant County Counsel, Director of the newly formed Resource Management Agency (RMA), and the director of the LEA), we are concerned that the recent Madera County restructuring has created a LEA

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environment that is contrary to the regulation cited above. Unfortunately, we have been unable to resolve this apparent conflict of interest during the teleconferences.

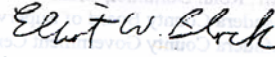
If this matter remains unresolved, we are required to bring this matter to the CIWMB for consideration of action. Therefore, please respond within thirty days of receiving this letter with any proposals you deem appropriate to help us solve this problem.

We look forward to your assistance in this matter. If you have any questions, please contact me at (916) 341-6379, or Mr. Elliot Block, CIWMB Staff Counsel at (916) 341-6080.

Sincerely,

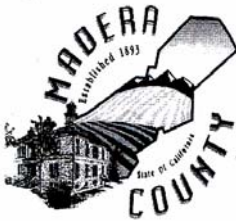


Gabe Aboushab, Supervisor
LEA Program Assistance and Evaluation Section



Elliot Block, Staff Counsel
Legal Office

cc: Mr. Stell Manfredi, Madera County Administrative Officer
Mr. Doug Nelson, Madera County Assistant County Council
Mr. Leonard Garoupa, Director, RMA
Ms. Jill Nishi, Director, Madera County LEA
Mr. Howard Levensen, Deputy Director, Permitting and Enforcement Division, CIWMB
Mr. Mark de Bie, Manager, Permitting and Inspection Branch, CIWMB
Ms. Sharon Anderson, Manager, LEA Support Services Branch, CIWMB



Office of the County Counsel

David A. Prentice, County Counsel
Douglas W. Nelson, Asst. County Counsel

William G. Smith, Deputy
James M. Gerecke, Deputy
Judy A. Wise, Deputy
David L. Herman, Deputy

April 26, 2004

Elliot Block, Staff Counsel
Gabe Aboushab, Supervisor
California Integrated Waste Management Board
1001 I Street
Sacramento, CA 95814



Re: Madera County Solid Waste Local
Enforcement Agency (LEA) Certification

Dear Mssrs. Block and Aboushab:

Thank you for your letter of April 20, 2004. I sent you an e-mail of the proposed ordinance that will be submitted to the Board of Supervisors for its approval in the event the terms are satisfactory to the CIWMB. The ordinance would place the LEA functions under the direction of the CAO.

The County of Madera feels that removal of LEA functions of the Environmental Health Department from the Resource Management Agency is a feasible solution that harmonizes the concern for independence of the LEA with the economic reality in Madera County. That reality is as follows:

1. The person who functions as the local enforcement agency officer must be a Registered Environmental Health Sanitarian (REHS). The Environmental Health Department lacks sufficient resources to employ a full-time REHS officer for the LEA. The LEA function is therefore performed based on full-time equivalent hours by the Director of Environmental Health and the REHS. The remaining functions of the Environmental Health Department are properly subject to supervision within the Resource management Agency.
2. The County of Madera lacks funding to set up a separate physical facility for the LEA officer.

Mssrs. Block and Aboushab
Re: Madera County Solid Waste Local
Enforcement Agency (LEA) Certification
Page Two
April 26, 2004

The County of Madera realizes that the LEA must be truly independent of the development departments in order to carry out its policing function. We also recognize and appreciate that for an agency to be "totally separate" from the operating unit, the ideal situation would be for it to be physically separate. The County believes this arrangement would permit independent supervision of the LEA, while maximizing the efforts and resources of the Environmental Health Department. The RMA Director would have no authority over the LEA function.

Thank you for your cooperation in this matter. We look forward to your reply.

Very truly yours,

DAVID A. PRENTICE
County Counsel



DOUGLAS W. NELSON
Assistant County Counsel

DWN:ab
cc: Stell Manfredi, County Administrative Officer
Kathy Kivley, Interim RMA Director
Jill Nishi, Environmental Health Director

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BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA
ORDINANCE NO. _____

*Proposed
4/18/04*

AN ORDINANCE ADDING CHAPTER 2.20 TO TITLE TWO OF THE
MADERA COUNTY CODE CREATING THE RESOURCE MANAGEMENT
AGENCY

The Board of Supervisors of the County of Madera, State of California, ordains as
follows:

SECTION 1:

Chapter 2.20 is added to Title Two of the Madera County Code, to read in its
entirety as follows:

Chapter 2.20: RESOURCE MANAGEMENT AGENCY

Sections:

- 2.20.010 Resource Management Agency created.
- 2.20.020 Office of Director of Resource Management Agency Created.
- 2.20.030 Duties.
- 2.20.040 Delegated Authority.
- 2.20.050 Assistance by other county officer or employee.

2.20.010 Resource Management Agency Created: The Resource Management
Agency of the County of Madera is created as a comprehensive local agency to administer,
coordinate and oversee the development and implementation of policies and regulations
concerning land use planning, engineering and general services, public works, special
district services, roads and transportation, parks and recreation activities, and
environmental health, except insofar as that department functions as the Local
Enforcement Agency. LEA functions will not be within the Resource Management Agency
but will remain subject to oversight and supervision by the County Administrative Officer.
The powers and duties of the constituent departments of the Resource Management

Agency are as set forth in state law and the Madera County Code. The constituent departments of the Resource Management Agency are the Planning Department, Road Department, Department of Engineering and General Services, Environmental Health Department, except as LEA , and such other departments as the Board of Supervisors may designate.

2.20.020 Office of Resource Management Agency Director Created: The Office of Resource Management Agency Director is created. The Director shall be appointed by and serve at the pleasure of the Board of Supervisors. The Director shall direct and oversee the operations of the component departments of the Resource Management Agency subject to the direction of the Board of Supervisors and in compliance with state law and local rules. The Director shall not supervise the LEA functions of the Environmental Health Department. That function will remain subject to the oversight and supervision of the County Administrative Officer.

2.20.030 Duties. The Director shall:

- A. Act as agent of, and be responsible to, the Board of Supervisors in all matters pertaining to the efficient administration of such affairs of the constituent departments of the Resource Management Agency as may be designated by this chapter or the Board of Supervisors;
- B. Enforce all ordinances, resolutions, orders, directives and regulations of the Board of Supervisors as may be directed by said Board;
- C. Recommend an annual county budget for the constituent departments of the agency and exercise budgetary oversight for those departments;
- D. Recommend a long-term plan of capital improvements accompanied by pertinent financial data and recommendations as to methods of financing;
- E. Recommend improved and standardized processes and procedures for the constituent departments;

F. Recommend desirable consolidations or rearrangements of departments and functions to promote efficiency and economy therein;

G. Conduct continuous research in administrative policies and practices, and make recommendations to the Board of Supervisors as to the adoption of such policies and practices as will further the orderly, efficient and economic conduct of the business of the Resource Management Agency;

H. Subject to the authority and duties of the purchasing agent, make recommendations as to the purchasing of property, equipment and supplies;

I. Direct such central administrative services as may be placed under the direction of the Resource Management Agency Director by the Board of Supervisors;

2.20.040 Delegated Authority The Resource Management Agency Director shall provide administrative direction to and exercise, as necessary, the Board of Supervisors= authority to supervise the operations of the constituent departments; evaluate those departments and department heads at least annually; hire, terminate, suspend or take such other disciplinary or related administrative actions as needed concerning those department heads, and to exercise authority for scheduled salary adjustments as authorized by the Board of Supervisors.

2.20.050 Assistance by other County Officer or Employee. To assist in carrying out the powers and duties herein vested in the Resource Management Agency Director, the Director may call upon any county officer or employee to perform any act which such officer or employee is legally authorized to perform including the furnishing of any statistical data or other reports required.

SECTION 2.

This ordinance shall take effect and be in force thirty (30) days after its adoption.

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The foregoing Ordinance was adopted this _____ day of _____, 2002,
by the following vote:

Supervisor Bigelow voted: _____

Supervisor Moss voted: _____

Supervisor Dominici voted: _____

Supervisor Silva voted: _____

Supervisor Gilbert voted: _____

Chairman, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By _____



Terry Tamminen
Secretary for
Environmental
Protection

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

June 8, 2004

Mr. David A. Prentice, County Counsel
Office of the County Counsel
333 West Olive Avenue
Madera, CA 93637

Subject: Madera County Solid Waste Local Enforcement Agency (LEA) Certification

Dear Mr. Prentice:

Thank you for your April 26 letter responding to our assistance request from the Madera County Board of Supervisor's Chair. The letter describes the County's proposal to resolve the LEA's apparent conflict of interest by separating the LEA from the Resource Management Agency by ordinance. To that end, we received with your letter, a draft local ordinance that states under Chapter 2.20, section 2.20.010:

"The Resource Management Agency of the County of Madera is created...to administer, coordinate and oversee...and environmental health, except insofar as the department functions as the Local Enforcement Agency. LEA functions will not be within the Resource Management Agency but will remain subject to oversight and supervision by the County Administrative Officer..."

After review, we find the proposed ordinance to be potentially satisfactory in creating an appropriate separation between the county's operating unit and its oversight agency (LEA). With the exception of locating the LEA within the CAO's office, the proposed solution is not unlike another current LEA jurisdiction. However, it appears that the LEA will be located in a building with the environmental health department (which is not to be supervising its activities) while the CAO (which is to supervise its activities) will be located in another building close to a mile away. Please provide details explaining the CAO - LEA oversight so that we may understand how the language of the proposed ordinance is to be implemented.

Furthermore, your response letter describes the county's inability to provide one full-time REHS dedicated to solid waste and mentions solving the problem by using more than one staff (in parts) to make up the "one" full-time REHS LEA staff. This disclosure creates a further problem for us by being: 1) in conflict with certification regulations (they require one full-time REHS dedicated to solid waste), and 2) in conflict with the LEA's "approved" Enforcement Program Plan (EPP), which continues to show one individual REHS LEA staff, as required. LEA staffing in compliance with staffing requirements is clearly as important as the potential conflict of interest. Please provide details on how Madera County will comply.

Finally, your letter indicates that a portion of the "full-time equivalent" REHS that you have described would be provided by the Director of Environmental Health. It appears that this individual's other duties will be directly supervised by the RMA Director. This staffing arrangement raises further concerns about how the language of the proposed ordinance would be implemented. Conversely, the use of one full-time REHS dedicated to solid waste, as discussed above, could avoid this matter because that individual would not need to be supervised by the RMA director for "other" duties.

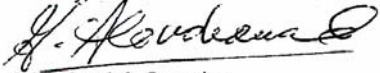
California Environmental Protection Agency

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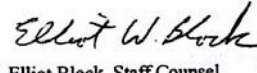
The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our Web site at <http://www.ciwmb.ca.gov/>

We hope this response enables you to address both the following issues: 1) LEA oversight in the proposed reporting scheme, and 2) staffing the Madera County LEA program in accordance with certification regulations and the LEA's approved EPP. Should you have any questions or clarification needs, contact me at 916-341-6379, or Mr. Elliot Block, Staff Counsel, at 916-341-6080.

Sincerely,



Gabe Aboushab, Supervisor
LEA Program Assistance and Evaluation Section



Elliot Block, Staff Counsel
Legal Office

cc: Mr. Ronn Dominici, Chair, Madera County Board of Supervisors
Mr. Stell Manfredi, Madera County Administrative Officer
Mr. Doug Nelson, Madera County Assistant County Council
Mr. David Herb, Interim Director, RMA
Ms. Jill Nishi, Director, Madera County LEA
Mr. Howard Levensen, Deputy Director, Permitting and Enforcement Division, CIWMB
Mr. Mark de Bie, Manager, Permitting and Inspection Branch, CIWMB
Ms. Sharon Anderson, Manager, LEA Support Services Branch, CIWMB



Y Tamminen
Secretary for
Environmental
Protection

California Integrated Waste Management Board

Linda Moulton-Patterson, Chair
1001 I Street • Sacramento, California 95814 • (916) 341-6000
Mailing Address: P. O. Box 4025, Sacramento, CA 95812-4025
www.ciwmb.ca.gov



Arnold Schwarzenegger
Governor

July 30, 2004

Mr. Ronn Dominici, Chair
Madera County Board of Supervisors
Madera County Government Center
209 W. Yosemite Avenue
Madera, CA 93637

Subject: Madera County Solid Waste Local Enforcement Agency (LEA) Certification

Dear Mr. Dominici:

As you may be aware, in our June letter to Mr. David A. Prentice, County Counsel, we commented on his April 26, 2004, letter responding to our assistance request from the Madera County Board of Supervisors. The letter described the County's proposal to resolve the LEA's apparent conflict of interest by separating the LEA from the Resource Management Agency by ordinance (Madera County's Chapter 2.20, section 2.20.010).

To reiterate, after review, we commented that the proposed ordinance could be potentially satisfactory in creating an appropriate separation between the county's operating unit and its oversight agency (LEA). However, it appears that the LEA will be located in a building with the environmental health department (which is not to be supervising its activities) while the CAO (which is to supervise its activities) will be located in another building close to a mile away. To date and contrary to our request, the County has not provided details to the CIWMB that explains how the language of the proposed ordinance would be implemented (the CAO - LEA oversight).

Furthermore, CIWMB staff commented regarding the county's inability to provide one full-time REHS dedicated to solid waste and mentioned that this disclosure creates a further problem under the regulations by being: 1) in conflict with certification regulations (they require one full-time REHS dedicated to solid waste); and 2) in conflict with the LEA's "approved" Enforcement Program Plan (EPP), which continues to show one individual REHS LEA staff, as required. LEA staffing in compliance with staffing requirements is clearly as important as the potential conflict of interest. No details have been provided to the CIWMB on how Madera County will comply.

Finally, the county indicated that a portion of the "full-time equivalent" REHS duties would be fulfilled by the Director of Environmental Health. It appears that the RMA Director will directly supervise this individual's other duties. This staffing arrangement raises further concerns about how the language of the proposed ordinance would be implemented. The use of one full-time REHS dedicated to solid waste would avoid this problem because that individual would not need to be supervised by the RMA director for "other" duties.

CIWMB staff had hoped our June 2004 response would enable the county to address: 1) LEA oversight in the proposed reporting scheme; and 2) staffing the Madera County LEA program in accordance with certification regulations and the LEA's approved EPP. To date this has not occurred. At this time, this letter is to advise you that California Integrated Waste Management Board (CIWMB) staff will be developing an agenda item describing what has occurred in Madera County with respect to the LEA maintaining certification requirements. The item would be presented to the CIWMB at an upcoming public meeting. According to Title 14, California Code of Regulations, Section 18087 "Process for Board Actions Over LEAs", a notice of the hearing will be sent by first-class mail and

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deposited in the mail at least thirty (30) days prior to the hearing. The notice will be sent to the LEA's most current address as specified in the completed Form CIWMB 1000 "Notice of Designation of Local Agency" currently on file with the CIWMB. The CIWMB will announce its decision regarding the action it takes at the conclusion of the hearing.

Should you have any questions or clarification needs, contact me at 916-341-6379, or Mr. Elliot Block, Staff Counsel, at 916-341-6080.

Sincerely,


Gabe Aboushab, Supervisor
LEA Program Assistance and Evaluation Section


Elliot Block, Staff Counsel
Legal Office

cc: Mr. David Prentice, Madera County Counsel
Mr. Stell Manfredi, Madera County Administrative Officer
Mr. Doug Nelson, Madera County Assistant County Counsel
Mr. David Herb, Interim Director, RMA
Ms. Jill Nishi, Director, Madera County LEA
Mr. Howard Levensen, Deputy Director, Permitting and Enforcement Division, CIWMB
Mr. Mark de Bic, Manager, Permitting and Inspection Branch, CIWMB
Ms. Sharon Anderson, Manager, LEA Support Services Branch, CIWMB



**BOARD OF SUPERVISORS
COUNTY OF MADERA**

MADERA COUNTY GOVERNMENT CENTER
209 W. YOSEMITE AVENUE / MADERA, CALIFORNIA 93637
(559) 675-7700 / FAX (559) 673-3302 / TDD (559) 675-8970

MEMBERS OF THE BOARD

FRANK BIGELOW
VERN MOSS
RONN DOMINICI
JOHN V. SILVA
GARY GILBERT

BONNIE HOLIDAY, Clerk of the Board

23

August 18, 2004

Elliot Block, Staff Counsel
Gabe Aboushab, Supervisor
California Integrated Waste Management Board
1001 I Street
Sacramento, California 95814

RE: Madera County LEA Certification

Dear Mssrs. Aboushab and Block:

Thank you for your letter of July 30, 2004. I discussed the problems you raised with County Administrative Officer Stell Manfredi, Environmental Health Director Jill Nishi, and Assistant County Counsel Douglas W. Nelson. I understand that CIWMB staff finds much of the County's proposed solution unacceptable. The County of Madera wants to find some middle ground, but the reality is, we are not large enough or affluent enough to implement the measures you require. Here are some of the problems:

Staffing and Facilities

There are only four active and eight closed solid waste facilities in the County of Madera that require LEA oversight. Under the existing organizational structure, the Environmental Health Department integrates the duties of several individuals to oversee those facilities while performing other duties. This County is struggling to balance its budget and we need to use our resources efficiently. It is not efficient to fund a separate REHS position, and to separately house and supervise that position. The economic impact of this requirement is simply disproportional to any realistic benefit.

Adequacy of Supervision

The current organizational structure allows the LEA function to be supervised by a department head who understands the duties of an LEA. Neither the County Administrative Officer nor the Health Department Director has that knowledge. Moreover, both the County Administrative Officer and the Health Department Director have a variety of other duties competing for their time and attention. The Environmental Health Director is the logical supervisor, and administrator oversight of the Environmental Health Director should properly come from the Resource Management Agency.

Mssrs. Aboushab and Block
August 18, 2004
Page 2

Perception of Conflict of Interest

The assertion that there will be a conflict of interest if the affected departments report to the RMA Director, as opposed to the CAO, is the most puzzling aspect of CIWMB's position. Before the RMA was created the County Administrative Officer supervised the Engineering Department. The Engineering Department oversaw and still oversees the contract operator of county owned solid waste facilities. The Environmental Health Department still has the LEA function. The ONLY change now is supervision is done by the RMA Director. Whether the CAO or the RMA Director exercises supervision the Board of Supervisors will oversee both the CAO and the RMA Director. County Government can never be a single purpose agency and there will always be the potential for conflict. Even so, the County has managed to do its job with integrity, and should be given the flexibility to continue to do so.

The County of Madera wants to continue working with CIWMB and staff to find some acceptable middle ground. We do not believe it is reasonable or necessary to limit staffing of the LEA to one fulltime REHS. It is our belief that the LEA function is more efficiently accomplished through available personnel using the equivalent hours that a fulltime REHS would expend. This method accords with actual practice in other counties of comparable size, it meets the spirit and intent of the LEA regulations, and it is economically feasible.

Very truly yours,



Ronn Dominici, Chairman
Supervisor, District 3

RD:tgb



Office of the County Counsel

*David A. Prentice, County Counsel
Douglas W. Nelson, Asst. County Counsel*

*William G. Smith, Deputy
James M. Gerecke, Deputy
David L. Herman, Deputy*

October 6, 2004

Elliot Block
Gabe Aboushab
California Integrated Waste Management Board
Post Office Box 4025
Sacramento, CA 95812-4025

Re: Madera County LEA

Dear Messrs. Block and Aboushab:

The County of Madera has amended its Resource Management Agency Ordinance, and we believe that the amendment should resolve the perceived conflict of interest in the LEA function of the Environmental Health Department. The amendment removes the RMA Director's power to hire and fire the constituent department heads. Department heads in the RMA are now hired and fired by the Board of Supervisors, and they report directly to the Board. The RMA Director advises the Board and makes recommendations but the final determination rests with the Board. With the amendments to the ordinance, the relationship of the RMA Director to the department heads is no different than that of the County Administrative Officer before the RMA was created.

For your review, I have enclosed a copy of the amended RMA ordinance, and a copy of the ordinance that prescribes the duties of the County Administrative Officer.

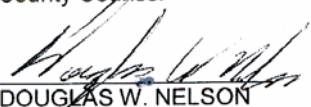
Messrs. Block and Aboushab
Re: Madera County LEA
October 6, 2004
Page Two

Jill Nishi, Environmental Health (Madera County LEA) Director is in the process of hiring additional staff so that a full time REHS can be dedicated to perform the LEA duties. Please let us know whether the changes the County of Madera has made satisfies the requirements of your Board.

Very truly yours,

DAVID A. PRENTICE
County Counsel

By


DOUGLAS W. NELSON
Assistant County Counsel

DWN:skmn
Enclosure

cc: Ronn Dominici, Chairman, Board of Supervisors
Stell Manfredi, County Administrative Officer
David A. Prentice, County Counsel
Dave Herb, Interim RMA Director
Jill Nishi, Environmental Health Director

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333 West Olive Avenue / Madera, California 93637
(559) 675-7717 / FAX (559) 675-0214 / TDD (559) 675-8970

BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA
ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 2.20, SECTION 2.20.40
OF TITLE 2 OF THE MADERA COUNTY CODE

The Board of Supervisors of the County of Madera, State of California, ordains as follows:

Section 1

Section 2.20.40 of Chapter 2.20 of the Madera County Code is amended to read as follows:

The Resource Management Agency Director (Director) shall provide administrative direction to and exercise, as necessary, the Board of Supervisors' authority to supervise the operations of the constituent departments; evaluate those departments and department heads at least annually, make recommendations for salary adjustments and to assist the Board of Supervisors in the hiring and termination of department heads under agency control and consistent with the mission and duties of the agency and the agency director as heretofore stated. The Board of Supervisors retains authority to recruit for, hire and terminate agency department heads with the assistance and counsel of the director. As a part of the selection process, the director shall be asked for and shall provide to the board his or her recommendations concerning the appointment of and salary and benefits for such department heads.

Section 2

The Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of seven (7) days from the passage thereof shall be published at least once in the Madera Tribune, a newspaper of general circulation, published and circulated in the County and thenceforth and thereafter the same shall be in full force and effect.

* * * * *

The foregoing Ordinance was adopted this _____ day of _____,
2004, by the following vote:

Supervisor Bigelow voted: _____

Supervisor Moss voted: _____

Supervisor Dominici voted: _____

Supervisor Silva voted: _____

Supervisor Gilbert voted: _____

Chairman, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

By _____

2.24.030 Duties.

Page 1 of 1

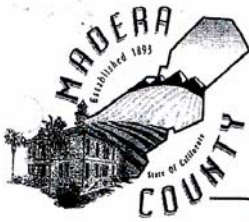
Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.24 DEPARTMENT OF ADMINISTRATIVE MANAGEMENT*

2.24.030 Duties.

It shall be the duty and responsibility of the department of administrative management and the county administrative officer to:

- A. Generally advise with, assist, act as agent or representative of, and be responsible to the board of supervisors in all matters pertaining to the efficient administration of such affairs of the county as may be designated by this chapter or the board of supervisors;
- B. Enforce all ordinances, resolutions, orders, directives and regulations of the board of supervisors as may be directed by said board;
- C. Recommend an annual county budget for the several offices and departments of the county and exercise continuous budgetary control;
- D. Recommend a long-term plan of capital improvements accompanied by pertinent financial data and recommendations as to methods of financing;
- E. Recommend improved or standardized forms or procedures for the several county offices and departments;
- F. Recommend desirable consolidations or rearrangements of departments and functions to promote efficiency and economy therein;
- G. Conduct continuous research in administrative policies and practices, and make recommendations to the board of supervisors as to the adoption of such policies and practices as will further the orderly, efficient and economic conduct of county business;
- H. Subject to the authority and duties of the purchasing agent, make recommendations as to the purchasing of property, equipment and supplies;
- I. Direct such central administrative services as may be placed under the direction of the county administrative officer by the board of supervisors;
- J. Represent the county of Madera in its inter-governmental relationships;
- K. In the event of an emergency situation requiring immediate action, to take such action as may be necessary and prudent to safeguard persons and property and to ensure that safety and order are maintained. Such action may include, but is not limited to, suspension of appointed department heads, the temporary appointment of acting department heads, and such other and further actions as may be reasonably necessary to ensure the proper functioning of county offices and departments until the board of supervisors may exercise its authority to deal with the emergency situation;
- L. Provide administrative direction to and exercise, as necessary, the board of supervisors' authority to supervise the operations of the several county offices and departments, including those offices and departments headed by elective officers of the county, to the extent the law gives to the board of supervisors the duty and authority to provide administrative direction to and supervise the operations of county offices and departments headed by elective officers of the county; to evaluate at least annually, and report to the board of supervisors on, the job performance of the appointed heads of the county offices and departments; to recommend to the board of supervisors, with respect to the appointed heads of the county offices and departments, such hiring, termination, suspension or other disciplinary or related administrative actions, and salary and benefit adjustments, as the administrative officer deems appropriate. (Ord. 536B § 1, 1996; Ord. 229A § 1, 1995; Ord. 536 § 2, 1990; Ord. 229 § 3, 1956).

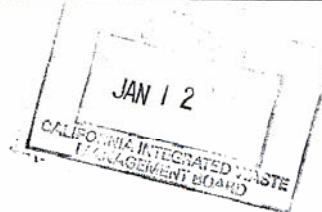


Office of the County Counsel

David A. Prentice, County Counsel
Douglas W. Nelson, Asst. County Counsel

William G. Smith, Deputy
James M. Gerecke, Deputy
David L. Herman, Deputy

January 7, 2005



CAL EPA
CIWMB
1001 I Street
Post Office Box 4025
Sacramento CA 95812-4025

Attention: Elliot Block

Re: Madera County LEA Ordinance


Dear Mr. Block:

I have attached all the ordinances pertaining to the RMA, including the most recent amendment, which strips the Director's power of hiring and firing and places it in the Board of Supervisors. The Board has not made structural changes, so the Environmental Health LEA is still in the Environmental Health Department.

Very truly yours,

DAVID A. PRENTICE
County Counsel

By:


DOUGLAS W. NELSON
Assistant County Counsel

DWN:jab
Attachments

S:\Admin\County Counsel\RMA\Environmental Health\Correspondence\block. lea ordinances.doc

SENT BY: MADERA CO. ENVIRONMENTAL HEALTH D;559 8757919;

JAN-7-05 10:27AM;

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BEFORE
THE BOARD OF SUPERVISORS
OF THE COUNTY OF MADERA
STATE OF CALIFORNIA
ORDINANCE NO. 585 A

AN ORDINANCE AMENDING CHAPTER 2.20, SECTION 2.20.40
OF TITLE 2 OF THE MADERA COUNTY CODE

The Board of Supervisors of the County of Madera, State of California, ordains as follows:

Section 1

Section 2.20.40 of Chapter 2.20 of the Madera County Code is amended to read as follows:

The Resource Management Agency Director (Director) shall provide administrative direction to and exercise, as necessary, the Board of Supervisors' authority to supervise the operations of the constituent departments; evaluate those departments and department heads at least annually, make recommendations for salary adjustments and to assist the Board of Supervisors in the hiring and termination of department heads under agency control and consistent with the mission and duties of the agency and the agency director as heretofore stated. The Board of Supervisors retains authority to recruit for, hire and terminate agency department heads with the assistance and counsel of the director. As a part of the selection process, the director shall be asked for and shall provide to the board his or her recommendations concerning the appointment of and salary and benefits for such department heads.

Section 2

The Ordinance shall take effect thirty (30) days after the date of its adoption, and prior to the expiration of seven (7) days from the passage thereof shall be published at least once in the Madera Tribune, a newspaper of general circulation, published and circulated in the County and thenceforth and thereafter the same shall be in full force and effect.

* * * * *

The foregoing Ordinance was adopted this 25 day of May

2004, by the following vote:

Supervisor Bigelow voted:

Yes

Supervisor Moss voted:

Yes

Supervisor Dominici voted:


Yes

Supervisor Silva voted:

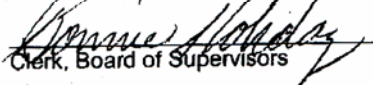
Yes

Supervisor Gilbert voted:

Yes

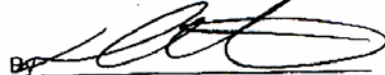

Chairman, Board of Supervisors

ATTEST:


Clerk, Board of Supervisors



Approved as to Legal Form:
COUNTY COUNSEL


By _____

2.20.010 Resource management agency created.

Page 1 of 1

Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.20 RESOURCE MANAGEMENT AGENCY

2.20.010 Resource management agency created.

The resource management agency of the county of Madera is created as a comprehensive local agency to administer, coordinate and oversee the development and implementation of policies and regulations concerning land use planning, engineering and general services, public works, special district services, roads and transportation, environmental health, and parks and recreation activities. The powers and duties of the constituent departments of the resource management agency are as set forth in state law and the Madera county code. The constituent departments of the resource management agency are the planning department, road department, department of engineering and general services, environmental health department and such other departments as the board of supervisors may designate. (Ord. 585 § 1(part), 2002).

2.20.020 Office of resource management agency director created.

Page 1 of 1

Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.20 RESOURCE MANAGEMENT AGENCY

2.20.020 Office of resource management agency director created.

The office of resource management agency director is created. The director shall be appointed by and serve at the pleasure of the board of supervisors. The director shall direct and oversee the operations of the component departments of the resource management agency subject to the direction of the board of supervisors and in compliance with state law and local rules. (Ord. 585 § 1(part), 2002).

2.20.030 Duties.

Page 1 of 1

Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.20 RESOURCE MANAGEMENT AGENCY

2.20.030 Duties.

The director shall:

- A. Act as agent of, and be responsible to, the board of supervisors in all matters pertaining to the efficient administration of such affairs of the constituent departments of the resource management agency as may be designated by this chapter or the board of supervisors;
- B. Enforce all ordinances, resolutions, orders, directives and regulations of the board of supervisors as may be directed by the board;
- C. Recommend an annual county budget for the constituent departments of the agency and exercise budgetary oversight for those departments;
- D. Recommend a long-term plan of capital improvements accompanied by pertinent financial data and recommendations as to methods of financing;
- E. Recommend improved and standardized processes and procedures for the constituent departments;
- F. Recommend desirable consolidations or rearrangements of departments and functions to promote efficiency and economy therein;
- G. Conduct continuous research in administrative policies and practices, and make recommendations to the board of supervisors as to the adoption of such policies and practices as will further the orderly, efficient and economic conduct of the business of the resource management agency;
- H. Subject to the authority and duties of the purchasing agent, make recommendations as to the purchasing of property, equipment and supplies; and
- I. Direct such central administrative services as may be placed under the direction of the resource management agency director by the board of supervisors. (Ord. 585 § 1(part), 2002).

2.20.050 Assistance by other county officer or employee.

Page 1 of 1

Title 2 ADMINISTRATION AND PERSONNEL

Chapter 2.20 RESOURCE MANAGEMENT AGENCY

2.20.050 Assistance by other county officer or employee.

To assist in carrying out the powers and duties herein vested in the resource management agency director, the director may call upon any county officer or employee to perform any act which such officer or employee is legally authorized to perform including the furnishing of any statistical data or other reports required. (Ord. 585 § 1(part), 2002).

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Resolution 2005-277 (Revised)

Consideration Of Board Action Over The Madera County Local Enforcement Agency For Failure To Comply With Designation And Certification Requirements (Title 14 CCR Sections 18085-18087)

WHEREAS, the California Integrated Waste Management Act of 1989 allows local governing bodies to designate an enforcement agency to carry out solid waste permitting, inspection and enforcement duties in their jurisdiction; and

WHEREAS, the Madera County Board of Supervisors and the majority of the City Councils with the majority of the incorporated population of the designated jurisdiction designated the Madera County Environmental Health Department as the local enforcement agency on March 24, 1992; and

WHEREAS, the California Integrated Waste Management Board approved the Enforcement Program Plan and designation and certified the Madera County Environmental Health Department as local enforcement agency on October 29, 1992; and

WHEREAS, Public Resources Code Section 43207 provides that no local governmental department or agency which is the operating unit of a solid waste handling or disposal operation shall be the enforcement agency; and

WHEREAS, Title 14, California Code of Regulations Sections 18011(a)(16) and (17) defines the local enforcement agency as an enforcement agency with board certifications totally separate from the operating units of the local governing body; and

WHEREAS, Title 14, California Code of Regulations, Section 18051(d) requires that the local enforcement agency designation information package include an organizational chart that documents the separation of the designated agency from public agencies or departments that are the operating units under the local governing body; and

WHEREAS, Title 14, California Code of Regulations, Section 18072(a) requires that the local enforcement agency shall have one or more full time staff members dedicated solely for solid waste issues; and

WHEREAS, in 2003, Madera County created the Resource Management Agency which includes both the Department of Engineering and General Services (which operates the solid waste facilities) and the Department of Environmental Health (which functions as the local enforcement agency) within the same agency and under the supervision of the Director of the Resource Management Agency; and

WHEREAS, Madera County does not have one full-time staff member dedicated to solid waste issues; and

(over)

WHEREAS, Board staff find that the current Madera County organization structure violates PRC 43207 and its implementing regulations (Title 14, California Code of Regulations, sections 18011 and 18051) and the inadequate staffing violates LEA certification regulations (Title 14, California Code of Regulations, section 18072); and

WHEREAS, based upon discussion during the Board's consideration of this matter, Madera County has agreed to work with Board staff to develop, by the December 2005 Board Meeting, an acceptable organizational structure and LEA staffing arrangement to comply with the Board's statutes and regulations.

NOW, THEREFORE, BE IT RESOLVED, based on the foregoing considerations, that the Board directs its staff to work with Madera County to develop, by the December 2005 Board meeting, an acceptable organizational structure and LEA staffing arrangement to comply with the Board's statutes and regulations.

CERTIFICATION

The undersigned Executive Director, or his designee, of the California Integrated Waste Management Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the California Integrated Waste Management Board held on October 3, 2005.

Dated: October 3, 2005

Mark Leary
Executive Director